

Testimony for C.S.H.B. 3303 (Representative Borris Miles)

House Corrections Committee – Thursday, April 9, 2015

Submitted by Erica Gammill - Director, Prison Justice League

C.S.H.B. 3303, by Representative Borris Miles, would create the Office of the Independent Ombudsman for the Texas Department of Criminal Justice. This newly created office would be responsible for the oversight of the Texas Department of Criminal Justice (TDCJ) operations, in particular as it relates to the treatment of people incarcerated in Texas' 109 prisons, as well as provide feedback on prison programs, policies, and procedures. The Office of the Independent Ombudsman for the Texas Department of Criminal Justice would be managed independently from the agency and would provide impartial investigations on behalf of prisoner complaints and family inquiries and would ensure the agency is operating efficiently, humanely, and within the parameters of the law and established standards of human rights.

Background

TDCJ operates one of the largest prison systems in the country and is charged with overseeing the incarceration of over 150,000 prisoners. TDCJ is responsible for ensuring the health and safety of Texas prisoners and its staff. TDCJ has one of the most important functions for the state, and an Office of the Independent Ombudsman would be beneficial to the agency because they could assist with public and prisoner inquiries, respond to complaints from prisoners and their loved ones, and act upon them, and ensure that TDCJ was meeting existing policies and established standards of human rights.

Unfortunately, TDCJ's history has been plagued with poor conditions, overcrowding, excessive use of force, and prisoner deaths. Many of these incidences have led to litigation – and federal oversight – that has resulted in a large cost to the state. The Office of the Independent Ombudsman for TDCJ could monitor conditions and investigate complaints from prisoners and their loved ones in order to avoid costly litigation and federal intervention.

Independent oversight of the Texas Department of Criminal Justice (TDCJ) is critically important to maintaining transparency of operations and constitutionally-mandated levels of conditions in Texas prisons.

The Office of the Independent Ombudsman for TDCJ could replace existing insufficient programs.

Although there are several administrative mechanisms available to prisoners and their families to seek relief for poor conditions, medical care, or excessive use of force (and other problems encountered in a correctional setting), they are largely ineffective.

The "Offender Grievance Program" is the program that prisoners can use to address staff wrongdoings and seek help if they've experienced a problem while in prison. Established in 1975, the grievance system is intended to facilitate problem resolution for issues encountered while in prison, including TDCJ policies and procedures, actions of another prisoners or prison staff, loss or damage of personal property, and more.¹ TDCJ Administrative Directive 03.82 describes the management of offender grievances. AD-03.82 details the valuable benefits for TDCJ, including "conflict resolution, cost savings

and efficiency from improved management information, averting litigation, and minimizing judicial oversight through comprehensive self-monitoring.”ⁱⁱ The grievance system provides an opportunity for a prisoner to bring to the attention of the unit administration and leadership a specific problem they are having, including the actions of a TDCJ employee or another prisoner. They do this by filling out a Step 1 Grievance Form and submitting it to a Grievance Officer for review. The grievance investigator, a prison staff member responsible for ensuring the proper handling of grievances, conducts an investigation and interviews relevant staff members. The grievance investigator has 30 days to respond to a Step 1 grievance after it has been submitted by a prisoner.

If the response to a Step 1 grievance is unsatisfactory for the prisoner, he may file an appeal, also known as a Step 2 grievance. A Step 2 grievance is a written form that explains why the Step 1 grievance response was unsatisfactory. Step 2 grievances are sent to the main office in Huntsville for review and this office has 35 days to respond.

It is generally accepted – by prisoners and advocates alike – that the grievance procedure does not work. On paper, the grievance procedure policies are adequate. However, our members continually report feeling frustrated by the grievance system due to what they perceive as a lack of proper investigation. For example, in grievances related to the actions of a prison staff member, the grievance response will indicate that the accused officer denies their claim and that no further action is warranted. In many cases, it becomes the prisoners’ word against a staff member, and the “investigation” involves asking a staff member whether the accusation is true or not.

The TDCJ Ombudsman Program, housed under the Administrative Review & Risk Management Division serves several functions: it acts as a liaison between TDCJ and the general public; it responds to inquiries regarding agency policies, procedures, or actions; it responds to questions concerning a specific offender; and facilitates problem resolution. Unfortunately, much like the Offender Grievance Program, the TDCJ Ombudsman Program does not adequately serve the purpose it was created to serve. Family members and loved ones frequently share that the TDCJ Ombudsman Program does nothing to adequately investigate claims of poor conditions or staff abuse, and often cites existing policy as an answer to serious inquiries. Independent, meaningful oversight is essential in assuring impartial investigations and to providing clear and full responses to public inquiries regarding agency operations.

No Meaningful Oversight Leads to Lack of Staff Accountability

The majority of correctional staff follow the rules. However, there are people who abuse their power and are able to proliferate because there is no one holding them accountable for their actions. Establishing an oversight body outside of the TDCJ and the Board of Criminal Justice, such as the Office of the Independent Ombudsman of TDCJ who is able to inspect prisons and make unannounced visits to investigate serious complaints, is essential to ensuring that the agency is operating within the law and established standards of human rights.

No Oversight Costs Texas Taxpayers

Lack of staff accountability, a poor offender grievance system, an inadequate current TDCJ Ombudsman program can lead to costs to Texas taxpayers. Past experience has shown that TDCJ needs an independent, investigative body that could provide oversight to unit operations and investigate complaints of staff physical abuse and poor conditions. They could also ensure that established policies

and procedures were followed and that the grievance system was used without retaliation against prisoners who use it. Otherwise, as history has shown, the state could be facing litigation costing millions of dollars or even federal intervention.

From 2009 through the first part of 2015, TDCJ paid more than 600 legal claims worth almost \$4.5 million dollars.ⁱⁱⁱ Litigation should be used as a last resort to ensure prisoners are protected and treated humanely while incarcerated. Litigation is not an efficient tool for government regulation. All correctional agencies should have several layers of accountability including internal and external oversight. Legal recourse could be avoided if there was meaningful, independent oversight of the agency which could result in a cost savings to the state.

I urge you to vote C.S.H.B 3303 out of committee to support government transparency, improve conditions in Texas prisons, and avoid costly litigation.

The Prison Justice League is a 501(c)(3) nonprofit that works to improve conditions in Texas prisons through litigation, advocacy, and by empowering our members.

ⁱ http://tdcj.state.tx.us/documents/Offender_Grievance_pamphlet_English.pdf

ⁱⁱ Texas Department of Criminal Justice, Administrative Directive 03.82, "Management of Offender Grievances," January 4, 2012.

ⁱⁱⁱ http://www.mystatesman.com/news/news/state-regional/state-incorrectly-obscures-millions-of-dollars-in-nkV67/?icmp=statesman_internallink_invitationbox_apr2013_statesmanstbtomystatesmanpremium#8c4fde66.3554830.735672